

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCS for HB 259 Small Business Saturday Sales Tax Holiday

**SPONSOR(S):** Finance & Tax Committee

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Finance & Tax Committee		Dugan	Langston

### SUMMARY ANALYSIS

Current law authorizes the levy and collection of sales and use tax and discretionary sales surtaxes, as well as exemptions and credits to such taxes, applicable to certain items or uses under specified circumstances. There are currently more than 200 different exemptions.

In prior years, the Legislature has enacted temporary periods (commonly called "sales tax holidays") during which certain items were exempted from the state sales tax and county discretionary sales surtaxes. The length of the exemption periods, the type of exempt items, and the value of the exemption have varied over the years.

The proposed committee substitute establishes a one day sales tax holiday on November 28, 2015. During the holiday, items that are sold by certain small businesses are exempt from the state sales tax and county discretionary sales surtaxes. "Small business" is defined as a sales tax dealer, as defined in s. 212.06, F.S., that registered with the Department of Revenue (DOR or department) and began operation no later than March 3, 2015, and that owed and remitted less than \$200,000 in sales tax to the department during the one-year period ending September 30, 2015.

The DOR is authorized to adopt emergency rules to implement the proposed committee substitute.

On March 13, 2015, the Revenue Estimating Conference estimated the bill to have a \$32.7 million nonrecurring negative impact on General Revenue and a \$7.3 million nonrecurring negative impact on local government revenue.

The bill provides a nonrecurring General Revenue appropriation of \$211,775 to DOR to administer the provisions of the act.

The proposed committee substitute has an effective date of July 1, 2015.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Current Situation**

##### Small Business Saturday

In 2010, American Express instituted a Small Business Saturday incentive for their cardholders who shopped at small, independent business on the Saturday after “Black Friday.”<sup>1</sup> It is estimated that consumers spent \$5.5 billion at small, independent businesses on Small Business Saturday in 2012, with pre-holiday surveys estimated at \$5.3 billion.<sup>2</sup>

##### Sales Tax

Current law levies a six percent sales and use tax on the sale or rental of most tangible personal property, admissions, rentals of transient accommodations, rental of commercial real estate, and a limited number of services. Chapter 212, F.S., contains statutory provisions authorizing the levy and collection of Florida’s sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. There are currently more than 200 different exemptions.<sup>3</sup> Generally, sales tax is added to the price of the taxable goods or service and collected from the purchaser at the time of sale.

In addition to the state tax, s. 212.055, F.S., authorizes eight distinct sales surtaxes that can be levied at the county level, at the discretion of certain local governing authorities and, with one exception, only if approved by referendum of the voters in a county. The allowed tax rates vary, as do the groups of counties that may levy the surtaxes. All of the discretionary sales surtaxes apply to the same transactions occurring in the county subject to the state sales and use tax imposed by ch. 212, F.S., and on communications services as defined in ch. 202, F.S.<sup>4</sup> The discretionary sales surtaxes are levied in addition to the state sales and use tax.

##### Sales Tax Holidays

Since 1998, the Legislature has enacted 19 temporary periods (commonly called “sales tax holidays”) during which certain household items, household appliances, clothing, footwear, books, and/or school supply items were exempted from the state sales tax and county discretionary sales surtaxes.

##### Back to School Holidays

Florida has enacted a “back to school” sales tax holidays twelve times since 1998. The length of the exemption periods has varied from 3 to 10 days. The type and value of exempt items has also varied. Clothing and footwear have always been exempted at various thresholds, most recently \$100. Books valued at \$50 or less were exempted in five periods. School supplies have been included starting in 2001, with the value threshold increasing from \$10 to \$15. In 2013, personal computers and related accessories purchased for noncommercial home or personal use with a sales price of \$750 or less were exempted. In 2014, the first \$750 of the sales price of personal computers and related accessories purchased for noncommercial home or personal use were exempted. The following table describes the history of back to school sales tax holidays in Florida:

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<sup>1</sup> American Express, *Small Business Saturday*, available at: <https://www.americanexpress.com/us/content/small-business/shop-small/about/?linknav=us-open-shops-small-homepage-about> (last visited March 13, 2015).

<sup>2</sup> Cynthia Magnuson-Allen, *U.S. Consumers Spent \$5.5 Billion ‘Shopping Small’ on Saturday*, November 27, 2012, available at <http://www.nfib.com/article/m-nfib-and-american-expres-61497/> (last visited March 13, 2015).

<sup>3</sup> For a list of exemptions and history, see REC, 2014 Florida Tax Handbook. Exemptions are estimated to total about \$12 billion.

<sup>4</sup> The tax rates, duration of the surtax, method of imposition, and proceed uses are individually specified in s. 212.055, F.S. General limitations, administration, and collection procedures are set forth in s. 212.054, F.S.

Dates	Length	TAX EXEMPTION THRESHOLDS				
		Clothing/ Footwear	Wallets/ Bags	Books	Computers	School Supplies
August 15-21, 1998	7 days	\$50 or less	N/A	N/A	N/A	N/A
July 31-August 8, 1999	9 days	\$100 or less	\$100 or less	N/A	N/A	N/A
July 29-August 6, 2000	9 days	\$100 or less	\$100 or less	N/A	N/A	N/A
July 28-August 5, 2001	9 days	\$50 or less	\$50 or less	N/A	N/A	\$10 or less
July 24-August 1, 2004	9 days	\$50 or less	\$50 or less	\$50 or less	N/A	\$10 or less
July 23-31, 2005	9 days	\$50 or less	\$50 or less	\$50 or less	N/A	\$10 or less
July 22-30, 2006	9 days	\$50 or less	\$50 or less	\$50 or less	N/A	\$10 or less
August 4-13, 2007	10 days	\$50 or less	\$50 or less	\$50 or less	N/A	\$10 or less
August 13-15, 2010	3 days	\$50 or less	\$50 or less	\$50 or less	N/A	\$10 or less
August 12-14, 2011	3 days	\$75 or less	\$75 or less	N/A	N/A	\$15 or less
August 3-5, 2012	3 days	\$75 or less	\$75 or less	N/A	N/A	\$15 or less
August 2-4, 2013	3 days	\$75 or less	\$75 or less	N/A	\$750 or less	\$15 or less
August 1-3, 2014	3 days	\$100 or less	\$100 or less	N/A	First \$750 of the sales price	\$15 or less

### Hurricane Preparedness Holidays

Florida has enacted sales tax holidays for certain hurricane preparedness items in 2005, 2006, 2007, and 2014. The state established periods where items below certain thresholds were exempt from tax. Items included in all four holidays were:

- portable self-powered light sources selling for \$20 or less,
- portable self-powered radios, two-way radios, or weather band radios selling for \$50 or less,
- tarpaulins or other flexible waterproof sheeting selling for \$50 or less,
- self-contained first-aid kits selling for \$30 or less,
- ground anchor systems or tie-down kits selling for \$50 or less,
- gas or diesel fuel tanks selling for \$25 or less,
- packages of AA-cell, C-cell, D-cell, 6-volt, or 9-volt batteries, excluding automobile and boat batteries, selling for \$30 or less, and
- nonelectric food storage coolers selling for \$30 or less.

In 2005, portable generators selling for \$750 or less were exempted. In 2006 and 2007, the threshold for generators was increased to \$1,000, and several additional items were added, such as:

- reusable ice or items sold as artificial ice selling for \$10 or less,
- cell phone chargers selling for \$40 or less,
- cell phone batteries selling for \$60 or less, and
- storm shutter devices selling for \$1,000 or less.

In 2014, portable generators selling for \$750 or less and reusable ice selling for \$10 or less were exempted.

In 2005 and 2007 the hurricane preparedness holidays ran from June 1 through June 12, in 2006 the Holiday was from May 21 through June 1. In 2014, the hurricane preparedness holiday ran from May 31 through June 8.

### Energy Efficient Appliance Holidays

From October 5 through October 11, 2006, Florida exempted energy-efficient products priced under \$1,500 and that met or exceeded the requirements of the federal ENERGY STAR program.<sup>5</sup> The following items were exempted:

- refrigerators,
- dishwashers,
- clothes washers,
- air conditioners,
- ceiling fans,
- light bulbs,
- dehumidifiers, and
- thermostats.

From September 19 through September 21, 2014, Florida exempted the first \$1,500 of the sales price for certain new ENERGY STAR products and certain new WaterSense products.<sup>6</sup>

The new ENERGY STAR products eligible for the 2014 holiday were:

- Room air conditioners,
- Air purifiers,
- Ceiling fans,
- Clothes washers,
- Clothes dryers,
- Dehumidifiers,
- Dishwashers,
- Freezers,
- Refrigerators,
- Water heaters,
- Swimming pool pumps, and
- Light bulbs.

The new WaterSense products eligible for the 2014 holiday were:

- Bathroom sink faucets,
- Faucet accessories,
- High-efficiency toilets and urinals,
- Showerheads, and
- Weather or sensor-based irrigation controllers.

### **Effect of Proposed Changes**

The proposed committee substitute establishes a one day sales tax holiday on November 28, 2015. During the holiday, items that are sold by certain “small businesses” are exempt from the state sales tax and county discretionary sales surtaxes.

The proposed committee substitute defines “small business” as a dealer, as defined in s. 212.06, F.S., that registered with the DOR and began operation no later than March 3, 2015, and that owed and remitted less than \$200,000 in sales tax to the department during the one-year period ending September 30, 2015. If the business has not been in operation for a complete year as of September 30, 2015, the business may qualify if it owed and remitted less than \$200,000 in sales tax from the first day of operation until September 30, 2015.

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<sup>5</sup> ENERGY STAR products must meet energy efficiency standards established by the U.S. Environmental Protection Agency.

<sup>6</sup> WaterSense labeled products and meet the US Environmental Protection Agency specifications for water efficiency and performance.

If the business is eligible to file a consolidated return (e.g., has multiple places of business), the total sales tax owed and remitted by the business' locations must be less than \$200,000 during the applicable period ending September 30, 2015.

The sales tax holiday is limited to the retail sale, as defined in s. 212.02(14), F.S., of items or articles of tangible personal property, as defined in 212.02(19), F.S., having a sales price of \$1,000 or less per item.

The DOR may adopt emergency rules to implement the proposed committee substitute.

**B. SECTION DIRECTORY:**

Section 1. Provides definitions; provides sales tax may not be collected during a specified period from certain small businesses.

Section 2. Provides an appropriation.

Section 3. Provides an effective date of July 1, 2015.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

On March 3, 2015, the Revenue Estimating Conference estimated the bill to have a \$32.7 million, nonrecurring negative impact on General Revenue.

2. Expenditures:

The bill provides a nonrecurring General Revenue appropriation of \$211,775 to DOR to administer the provisions of the act.

According to the DOR bill analysis,<sup>7</sup> the department projects an operational impact of \$211,775 in Fiscal Year 2015-2016 to produce a Tax Information Publication for the sales tax holiday in the proposed committee substitute.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

On March 3, 2015, the Revenue Estimating Conference estimated the bill to have a \$7.3 million nonrecurring negative impact on local government revenue.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The proposed committee substitute may increase the amount of sales at retail for the small businesses impacted by the bill.

**D. FISCAL COMMENTS:**

None.

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<sup>7</sup> DOR, Agency Analysis of 2015 HB 259, page 7 (February 10, 2015).

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. This proposed committee substitute does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

The term "Small Business Saturday" is trademarked by American Express.<sup>8</sup>

#### B. RULE-MAKING AUTHORITY:

The DOR is granted emergency rulemaking authority to implement the provisions of the proposed committee substitute.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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<sup>8</sup> See U.S. Patent and Trademark Office, available at: <http://tmsearch.uspto.gov/bin/showfield?f=doc&state=4810:qxjz99.5.2> (last visited February 16, 2015).